

SECOND REGULAR SESSION

# SENATE BILL NO. 1053

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

Read 1st time February 15, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5157S.011

## AN ACT

To repeal sections 660.546, 660.547, 660.549, 660.551, 660.553, 660.555, and 660.557, RSMo, and to enact in lieu thereof six new sections relating to the long-term care partnership act.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 660.546, 660.547, 660.549, 660.551, 660.553, 660.555, and 660.557, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 208.690, 208.692, 208.694, 208.696, 208.698, and 208.699, to read as follows:

**208.690. 1. This act shall be known and may be cited as the "Missouri Long-Term Care Partnership Act".**

**2. The director of the Missouri department of social services shall, in conjunction with the director of the Missouri department of insurance, coordinate a long-term care insurance program whereby private insurance and Medicaid funds shall be used to finance long-term care. Under such program, an individual may purchase a precertified long-term care insurance policy governed by 376.1100 through 376.1130 and that meets the criteria prescribed by sections 208.690 to 208.699, in an amount commensurate with such individual's assets. Notwithstanding any provision of law to the contrary, the resources of such an individual, to the extent such resources are equal to the amount of long-term care insurance benefit payments as provided in section 208.692 shall not be considered by the department of social services in a determination of:**

**(1) Eligibility for Medicaid under 42 U.S.C. 1396a.(a)(10)(A)(ii)(V)**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 and (VI);

18 (2) The amount of any Medicaid payment; or

19 (3) Any subsequent recovery by the state of a payment for  
20 medical services.

208.692. The department of social services shall count insurance  
2 benefit payments toward resource exclusion to the extent such  
3 payments are:

4 (1) For services Medicaid approves or covers for its recipients;

5 (2) For the lesser of the actual charge and the amount paid by  
6 the insurance company;

7 (3) For nursing facility care or formal services delivered to  
8 insureds in the community as part of a care plan approved by a  
9 coordination, assessment, and monitoring policy licensed under chapter  
10 198; and

11 (4) For services received prior to and following the first month  
12 of Medicaid eligibility for long-term care as established by the director  
13 of the department of social services. The department of social services  
14 shall promulgate rules to implement the provisions of this act relating  
15 to determining eligibility of applicants for Medicaid and the coverage  
16 requirements for long-term care benefits. Any rule or portion of a rule,  
17 as that term is defined in section 536.010, RSMo, that is created under  
18 the authority delegated in this section shall become effective only if it  
19 complies with and is subject to all of the provisions of chapter 536,  
20 RSMo, and, if applicable, section 536.028, RSMo. This section and  
21 chapter 536, RSMo, are nonseverable and if any of the powers vested  
22 with the general assembly pursuant to chapter 536, RSMo, to review, to  
23 delay the effective date, or to disapprove and annul a rule are  
24 subsequently held unconstitutional, then the grant of rulemaking  
25 authority and any rule proposed or adopted after August 28, 2006, shall  
26 be invalid and void.

208.694. 1. The director of the department of insurance shall  
2 precertify only long-term care insurance policies that:

3 (1) Are guaranteed renewable;

4 (2) Offer the option of home- and community-based services in  
5 lieu of nursing facility care;

6 (3) Offer automatic inflation protection or optional periodic per  
7 diem upgrades until the insured begins to receive long-term care

8   **benefits;**

9           **(4) Do not require prior hospitalization or confinement in a**  
10 **nursing facility as a prerequisite to receiving long-term care benefits;**

11           **(5) Provide for minimum coverage that shall be for a dollar**  
12 **amount equivalent to thirty-six months of nursing facility care at the**  
13 **minimum daily benefit rate. The policy shall provide for home care**  
14 **benefits to be substituted for nursing facility care benefits on the basis**  
15 **of two home care days for one nursing facility day. The minimum daily**  
16 **benefits shall be one hundred dollars for nursing facility care or fifty**  
17 **dollars for home care. These minimum daily benefit amounts shall be**  
18 **adjusted by the director of the department of insurance on October**  
19 **first of each year, based on the health care index used under Medicaid**  
20 **for nursing facility rate setting. Adjusted minimum daily benefit**  
21 **amounts shall be rounded to the nearest whole dollar;**

22           **(6) Provide for a designated third party to receive notice if the**  
23 **policy is about to lapse for nonpayment of premium and an additional**  
24 **thirty-day grace period for payment of premium following notification**  
25 **to such person;**

26           **(7) Provide for keeping records and an explanation of benefit**  
27 **reports on insurance payments that count toward Medicaid resource**  
28 **exclusion; and**

29           **(8) Provide the management information and reports necessary**  
30 **to document the extent of Medicaid resource protection offered and to**  
31 **evaluate the Missouri long-term care partnership act.**

32           **2. The director of the department of insurance shall promulgate**  
33 **rules to carry out the precertification provisions of this section. Any**  
34 **rule or portion of a rule, as that term is defined in section 536.010,**  
35 **RSMo, that is created under the authority delegated in this section**  
36 **shall become effective only if it complies with and is subject to all of**  
37 **the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**  
38 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**  
39 **of the powers vested with the general assembly pursuant to chapter**  
40 **536, RSMo, to review, to delay the effective date, or to disapprove and**  
41 **annul a rule are subsequently held unconstitutional, then the grant of**  
42 **rulemaking authority and any rule proposed or adopted after August**  
43 **28, 2006, shall be invalid and void.**

**208.696. The director of the department of insurance, in**

2 conjunction with the director of the department of social services, shall  
3 submit a report on the progress of the long-term care insurance  
4 program to the legislature on September 1, 2007, and on January first  
5 each year thereafter. Such report shall include:

6 (1) The success in implementing the public and private  
7 partnership;

8 (2) The number of policies precertified;

9 (3) The number, age, and financial circumstances of individuals  
10 purchasing precertified policies;

11 (4) The number of individuals seeking consumer information  
12 services;

13 (5) The extent and type of benefits paid under precertified  
14 policies that could count toward Medicaid resource protection;

15 (6) Estimates of impact on present and future Medicaid  
16 expenditures;

17 (7) The cost effectiveness of the program; and

18 (8) A determination regarding the appropriateness of continuing  
19 the program.

208.698. As used in sections 208.690 to 208.699, the term "nursing  
2 facility care" means care provided in a long-term care facility licensed  
3 under chapter 198, RSMo.

208.699. Pursuant to section 23.253, RSMo, of the Missouri sunset  
2 act:

3 (1) The provisions of the new program authorized under sections  
4 208.690 to 208.698 shall sunset automatically six years after the  
5 effective date of said sections unless reauthorized by an act of the  
6 general assembly; and

7 (2) If such program is reauthorized, the program authorized  
8 under sections 208.690 to 208.698 shall sunset automatically twelve  
9 years after the effective date of the reauthorization of sections 208.690  
10 to 208.698; and

11 (3) Sections 208.690 to 208.698 shall terminate on September first  
12 of the calendar year immediately following the calendar year in which  
13 the program authorized under said sections is sunset.

[660.546. 1. The department of social services shall  
2 coordinate a program entitled the "Missouri Partnership for  
3 Long-term Care" whereby private insurance and Medicaid funds

shall be combined to finance long-term care. Under such program, an individual may purchase a precertified long-term care insurance policy in an amount commensurate with his resources as defined pursuant to the Medicaid program. Notwithstanding any provision of law to the contrary, the resources of such an individual, to the extent such resources are equal to the amount of long-term care insurance benefit payments as provided in section 660.547, shall not be considered by the department of social services in a determination of:

(1) His eligibility for Medicaid;

(2) The amount of any Medicaid payment.

Any subsequent recovery of a payment for medical services by the state shall be as provided by federal law.

2. Notwithstanding any provision of law to the contrary, for purposes of recovering any medical assistance paid on behalf of an individual who was allowed an asset or resource disregard based on such long-term care insurance policy, the definition of estate shall be expanded to include any other real or personal property and other assets in which the individual has any legal title or interest at the time of death, to the extent of such interest, including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.]

[660.547. The department of social services shall request appropriate waiver or waivers from the Secretary of the federal Department of Health and Human Services to permit the use of long-term care insurance for the preservation of resources pursuant to section 660.546. Such preservation shall be provided, to the extent approved by the federal Department of Health and Human Services, for any purchaser of a precertified long-term care insurance policy delivered, issued for delivery or renewed within five years after receipt of the federal approval of the waiver, and shall continue for the life of the original purchaser of the policy, provided that he maintains his obligations pursuant to the precertified long-term care insurance policy. Insurance benefit payments made on behalf of a claimant, for payment of services

14 which would be covered under section 208.152, RSMo, shall be  
15 considered to be expenditures of resources as required under  
16 chapter 208, RSMo, for eligibility for medical assistance to the  
17 extent that such payments are:

18 (1) For services Medicaid approves or covers for its  
19 recipients;

20 (2) In an amount not in excess of the charges of the health  
21 services provider;

22 (3) For nursing home care, or formal services delivered to  
23 insureds in the community as part of a care plan approved by a  
24 coordination, assessment and monitoring agency licensed pursuant  
25 to chapter 198, RSMo; and

26 (4) For services provided after the individual meets the  
27 coverage requirements for long-term care benefits established by  
28 the department of social services for this program.

29 The director of the department of social services shall adopt  
30 regulations in accordance with chapter 536, RSMo, to implement  
31 the provisions of sections 660.546 to 660.557, relating to  
32 determining eligibility of applicants for Medicaid and the coverage  
33 requirements for long-term care benefits.]

[660.549. The department of social services shall establish  
2 an outreach program to educate consumers to:

3 (1) The mechanisms for financing long-term; and

4 (2) The asset protection provided under sections 660.546 to  
5 660.557.]

[660.551. 1. The department of insurance shall precertify  
2 long-term care insurance policies which are issued by insurers who,  
3 in addition to complying with other relevant laws and regulations:

4 (1) Alert the purchaser to the availability of consumer  
5 information and public education provided by the division of aging  
6 and the department of insurance pursuant to sections 660.546 to  
7 660.557;

8 (2) Offer the option of home- and community-based services  
9 in lieu of nursing home care;

10 (3) Offer automatic inflation protection or optional periodic  
11 per diem upgrades until the insured begins to receive long-term

care benefits; provided, however, that such inflation protection or upgrades shall not be required of life insurance policies or riders containing accelerated long-term care benefits;

(4) Provide for the keeping of records and an explanation of benefits reports to the insured and the department of insurance on insurance payments which count toward Medicaid resource exclusion; and

(5) Provide the management information and reports necessary to document the extent of Medicaid resource protection offered and to evaluate the Missouri partnership for long-term care including, but not limited to, the information listed in section 660.553.

Included among those policies precertified under this section shall be life insurance policies which offer long-term care either by rider or integrated into the life insurance policy.

2. No policy shall be precertified pursuant to sections 660.546 to 660.557, if it requires prior hospitalization or a prior stay in a nursing home as a condition of providing benefits.

3. The department of insurance may adopt regulations to carry out the provisions of sections 660.546 to 660.557.]

[660.553. The department of insurance shall provide public information to assist individuals in choosing appropriate insurance coverage, and shall establish an outreach program to educate consumers as to:

(1) The need for long-term; and

(2) The availability of long-term care insurance.]

[660.555. The director of the department of insurance each year, on January first shall report in writing to the department of social services the following information:

(1) The success in implementing the provisions of sections 660.546 to 660.557;

(2) The number of policies precertified pursuant to sections 660.546 to 660.557;

(3) The number of individuals filing consumer complaints with respect to precertified policies; and

10                   (4) The extent and type of benefits paid, in the aggregate,  
11                   under such policies that could count toward Medicaid resource  
12                   protection.]

                  [660.557. The director of the department of social services  
2                   shall request the federal approvals necessary to carry out the  
3                   purposes of sections 660.546 to 660.557. Each year on January  
4                   first, the director of the department of social services shall report  
5                   in writing to the general assembly on the progress of the  
6                   program. Such report will include, but not be limited to:

7                   (1) The success in implementing the provisions of sections  
8                   660.546 to 660.557;

9                   (2) The number of policies precertified pursuant to sections  
10                  660.546 to 660.557;

11                  (3) The number of individuals filing consumer complaints  
12                  with respect to precertified policies;

13                  (4) The extent and type of benefits paid, in the aggregate,  
14                  under such policies that could count toward Medicaid resource  
15                  protection;

16                  (5) Estimates of impact on present and future Medicaid  
17                  expenditures;

18                  (6) The cost effectiveness of the program; and

19                  (7) A recommendation regarding the appropriateness of  
20                  continuing the program.]

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